Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123

EMERGENCY PEITION
FOR EXTENSION OF THE RATE RELIEF TERMINATION DATE
ON ASL SERVICES HOLDINGS, LLC dba GLOBALVRS

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August 12, 2016

SUMMARY

ASL Services Holdings, LLC dba GlobalVRS ("GlobalVRS"), submits this *Emergency Petition* to request temporary waiver of the 16-month, October 31, 2016 expiration of Commission's March 3, 2016 limited compensation rate relief for video relay service providers with 500,000 or fewer monthly minutes applicable to GlobalVRS, The conditions that precipitated the Commission's temporary Rate Relief remain unchanged, if not exacerbated by additional exogenous compliance costs assumed by GlobalVRS since. Unless granted, GlobalVRS will still not be compensated for its service costs and must take even further cost-cutting actions that will impact service quality, or reconsider its continued provision of VRS altogether.

The Commission has a statutory obligation to compensate providers for their full costs of providing VRS as acknowledged by the Commission and U.S. Court of Appeals for the District of Columbia Circuit. The Commission and Fund Administrator have determined that GlobalVRS was not being compensated for the costs of providing service.

The 16-month termination date was not explicitly tied to one or more certain events, but was nevertheless predicated on a change of conditions and circumstances that were – presumably - expected to occur by October 31, 2016. None of the anticipated conditions or circumstances on which the Rate Relief was granted has materialized. Unless the Commission can establish from the current record in this proceeding that the basis for terminating the rate freeze has been met, its 16-month extension will have become arbitrary and capricious and will result in the exit of reputable providers such as GlobalVRS, whose financial condition will not allow the Company to await promised reforms indefinitely.

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ASL Services Holdings, LLC dba GlobalVRS ("GlobalVRS"), submits this *Emergency Petition* to request temporary waiver of the 16-month expiration of Commission's March 3, 2016 limited compensation rate relief for video relay service ("VRS") providers with 500,000 or fewer monthly minutes ("Rate Relief"),[4] as applicable to GlobalVRS, The Commission's Rate Relief is scheduled to terminate on October 31, 2016. Yet the conditions that precipitated the Commission's temporary Rate Relief remain unchanged, if not exacerbated by additional exogenous compliance costs assumed by GlobalVRS since. Unless granted, GlobalVRS must take further cost-cutting actions that will impact service quality or reconsider its continued provision of VRS altogether.

The Commission maintains a statutory obligation to ensure that provider service costs are fully compensated for their service costs. In granting its Rate Relief, the Commission acknowledged that providers with 500,000 or fewer monthly minutes ("Tier 1" providers) are not being compensated for their allowable service cost. On this basis, the Commission granted limited Rate Relief through October

[4] *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Report and Order* (Rel. March 3, 2016). [*Rate Freeze Order*].

31, 2016, as originally proposed in its *Further Notice of Proposed Rulemaking*.[5] The 16-month termination date was not explicitly tied to one or more certain events, but was nevertheless predicated on a change of conditions and circumstances that were – presumably - expected to occur by October 31, 2016. None of the anticipated conditions or circumstances on which the Rate Relief was granted have materialized. Upon expiration of the Rate Relief, GlobalVRS' financial condition will revert to its pre-Rate Relief status unless the promised Commission reforms are implemented. If the promised Commission reforms on which the original "glide path" rate reductions are not implemented by October 31, 2016, the Commission will not be in compliance with its statutory obligation to fully compensate Tier 1 providers for their service costs, and the October 31, 2016 expiration date will become a *de facto* arbitrary and capricious date for Rate Relief termination.

GlobalVRS respectfully requests that the Commission grant a temporary waiver of the 16-month Rate Relief termination until such time as Commission reforms implemented in the *2013 VRS Reform Order*[6] and on which the "glide path" rate reductions were predicated, are implemented.

I. INTRODUCTION

On March 3, 2016, the Commission granted limited, 16-month compensation rate relief for Tier 1 providers, including GlobalVRS.[7] This Rate Relief directed the Interstate Telecommunications Relay Services Fund administrator to pay compensation to Tier 1 providers at a rate of $5.29 per minute for a

[5] *Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 30 FCC Rcd at 12981 (2015) [*Rate Freeze NPRM*].

[6] *Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013) (*2013 VRS Reform Order*), *aff'd in part and vacated in part sub nom. Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014).

[7] There is a wide disparity in economies of scale between companies operating at the lower end of Tier 1 usage and the upper end approximating 500,000 monthly minutes of use. By the time a provider approximates 500,000 monthly minutes, of use, it has achieve economies of scale that appropriately support a reduction of compensation as the Commission has determined. As has been demonstrated to the Commission, now with the benefit of additional cost information presented herein, companies such as GlobalVRS that continue to operate on the lower end of the Tier 1 scale remain challenged to increase economies of scale in the absence of full interoperability and the other reforms the Commission has not yet fully implemented. As further discussed herein, under the existing circumstances, GlobalVRS cannot be expected to increase economies of scale in the eight months during which Rate Relief will have applied.

16-month period beginning retroactively on July 1, 2015. The Rate Relief period ends on October 31, 2016, only eight months following implementation. At that time, Tier 1 providers will be compensated at the rate of \$5.06 per minute[8] for the period November 1, 2016, to April 30, 2017, and \$4.82 per minute[9] for the period May 1 to June 30, 2017.

In proposing, and subsequently granting, Rate Relief, the Commission stated that it had "relied on an analysis by the TRS Fund administrator, Rolka Loube Associates LLC," showing that "the average projected allowable costs for the smallest VRS providers for 2015-16 were above the Tier I rates scheduled for the 2015-16 Fund Year 'potentially jeopardizing their continuation of service.' "[10] The Commission concluded that, "… absent rate relief, it is likely that the smallest providers either (1) will be unable to maintain their operations in 2016 or (2) will be unable to continue to grow their operations significantly in the direction of reaching optimum levels of efficiency."[11]

In the scant four months since the Commission's *Rate Freeze Order* was adopted, GlobalVRS' financial condition remains unchanged. Though the rate freeze has mitigated severe immediate cost pressures on the Company, it has far from eliminated them. This condition has been further exacerbated by exogenous costs GlobalVRS continues to assume to comply with *2013 VRS Reform Order* reforms without appropriate compensation, and its provision of Spanish language services, which GlobalVRS has documented as significantly contributing to its underlying costs.

Further, with only three months remaining until the Commission's Rate Relief ends, GlobalVRS is no better situated to "grow its operations," already having made significant cost reductions, nor is

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[8] The Tier 1 "glide path" rates to have gone into effect for the period July to December 2015 *Rate Freeze Order* Table 1.

[9] The Tier 1 "glide path" rates to have gone into effect for the period January to June 2016. *Id.*

[10] *Rate Freeze Order* at 5, citing to *Rate Freeze NPRM* at para. 18 and Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at 24-25 (filed Apr. 24, 2015) (*2015 TRS Rate Filing*).

[11] Id. at 10 citing to Convo, CAAG/Star VRS, and ASL/Global VRS, *Emergency Petition for a Temporary Nunc Pro Tunc Waiver* (filed Nov. 25, 2015) (Smallest VRS Providers Petition); at 11 "…(stating that in order to continue operating despite deficits, the smallest VRS providers "have been forced to seek alternative financing arrangements, such as short-term bridge loans from family members, or to subsidize their VRS operations from revenue generated by other profitable non-VRS divisions"), and at 11-12 "(asserting that such alternative financing arrangements are insufficient to enable the smallest providers to continue their growth trajectories)."

GlobalVRS closer to achieving the "optimum levels of efficiency" the Commission maintains Tier 1 providers must be capable of achieving. These circumstances remain as they have, as a direct result of the Commission being no closer to implementing the *2013 VRS Reform Order* reforms now than it was in March, or in November 2015 when the *Rate Freeze NPRM* was issued. GlobalVRS cannot on the one hand meet the Commission's expectations for achieving growing its operations or achieving optimum levels of efficiency, while on the other being unable to avail itself of promised reforms. If Commission reforms are not implemented by the Rate Relief termination date, GlobalVRS' pre-reform circumstances remain, and the Rate Relief has simply delayed the inevitable loss of another provider.

The Commission has authority to extend the Rate Relief until meaningful action is taken to reduce Tier 1 provider costs through adoption of the anticipated reforms including amendments to its compensation methodology to separately incorporate Tier1 provider costs into compensation calculations. Faced with the prospect of limiting service or exiting the provision of VRS entirely, GlobalVRS respectfully requests that the Tier 1 Rate Relief termination be temporarily extended until such time as the Commission's promised reforms are implemented and its Tier 1 compensation structure fully compensates Global VRS for its service costs as required under law.

II. THE COMMISSION HAS LEGAL AUTHORITY AND AN OBLIGATION TO ENSURE THAT PROVIDERS ARE FULLY COMPENSATED FOR SERVICE COSTS UNDER THE TRS FUND BASED ON THE RECORD BEFORE THE COMMISSION.

The Commission's statutory obligation to compensate providers for their service costs is well founded, as the U.S. Court of Appeals for the D.C. Circuit ("Court") has found and Commission itself recognizes. In the *2013 VRS Reform Order,* the Commission states,

> Our authority to establish compensation rates for TRS providers is well established. Congress determined that the Commission should ensure that compensation is provided for the costs caused by interstate TRS.[12]

As recently as the end of 2014, the Commission's obligation was underscored by the Court in its Sorenson decision, wherein the Court concluded:

[12] *2013 VRS Reform Order* at 16, citing to 47 U.S.C. § 225(d)(3)(B).

> Turning to the substance of [the Sorenson speed-of-answer] challenge, we hardly do more than note that the Commission is, by its own interpretation of the [Americans With Disabilities Act], is required to reimburse providers for *all* costs necessarily incurred to meet the mandatory minimum standards established by the agency [citing to 19 FCC Rcd. At 12543-44 para 181]. By adopting new speed of answer metric without evidence of the cost to comply with it, the Commission acted arbitrarily and capriciously.[13]

Further, beyond underscoring the Commission's obligation to compensate providers for *all* costs necessary to meet the Commission's mandatory standards, the Court's finding in *Sorenson* explicitly establishes that the Commission must act on the basis of evidence if it is to impose – or in the case of its Rate Relief, terminate – a compensation structure that the Commission found was necessary based on evidence provided by the Tier 1 providers.

As discussed further below, the evidence presented by GlobalVRS herein confirms that the Rate Relief remains necessary for GlobalVRS and should continue until the adopted reforms are implemented. Otherwise, to terminate the Rate Relief when presented with clear evidence reflecting that the Rate Relief is still warranted itself will render the Commission's October 31, 2016 Rate Relief termination arbitrary and capricious.[14]

III. THE COMMISSION AND FUND ADMINISTRATOR HAVE EXPLICITLY ACKNOWLEDGED, AND GLOBALVRS DEMONSTRATED, THAT THE CURRENT COMPENSATION STRUCTURE IS NOT COVERING GLOBALVRS' VRS COSTS.

In March, the Commission explicitly concluded that GlobalVRS' VRS costs were not being compensated and jeopardized its continued operations as a Tier 1.[15]

> In proposing a rate freeze for such providers, the Commission relied on an analysis by the TRS Fund administrator, Rolka Loube Associates LLC (Rolka Loube), showing that, while the average projected per-minute costs for VRS providers as a whole remain well below average compensation rates, *the average projected allowable costs for the smallest VRS providers for 2015-16 were above the Tier I rates scheduled for the 2015-16 Fund Year, 'potentially jeopardizing*

[13] *Sorenson*, 765 F.3d 37 (2014) at 50 [*Sorenson*] [emphasis supplied].

[14] "A decision is arbitrary and capricious if the agency 'offered an explanation for its decision that runs counter to the evidence before the agency.'" *Id.* citing to *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374, 118 S.Ct. 818, 139 L.Ed.2d 797 (1998); accord Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983)

[15] *Rate Freeze Order* at 5, original citations retained.

their continuation of service."[16] In addition, the Commission relied on individual cost data filed by the each VRS provider, which indicated that, in the years since the *VRS Reform Order,* each of the smallest VRS providers has made strenuous and, to some extent, successful efforts to reduce per-minute costs, but each has fallen short of achieving the cost reductions necessary to break even under the *VRS Reform Order* compensation rates.[17]

The Commission went on to find that

> The record of this proceeding confirms that for each of the smallest VRS providers, the per-minute costs incurred or projected by the provider in calendar years 2015 and 2016, respectively, are higher than the "blended" compensation rate applicable to that provider in that year. Although individual providers' cost data have been submitted with requests for confidentiality and thus are not publicly disclosed in this Report and Order, the individual cost information filed by the smallest VRS providers, which we find to be credible, while updating the cost data previously filed with Rolka Loube, confirms Rolka Loube's initial assessment that the deficits incurred by the smallest VRS providers may be "jeopardizing their continuation of service."[18]

and[19]

> Therefore, we find that, absent rate relief, it is likely that the smallest providers either (1) will be unable to maintain their operations in 2016 or (2) will be unable to continue to grow their operations significantly in the direction of reaching optimum levels of efficiency.[20] As a result, the Commission's objective to offer such providers "a reasonable opportunity to . . . reach the optimum scale to compete effectively" may be undermined.[21]

[16] *VRS Rate Freeze FNPRM,* 30 FCC Rcd at 12981, para. 18. *See also* Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at 24-25 (filed Apr. 24, 2015) (*2015 TRS Rate Filing*).

[17] *VRS Rate Freeze FNPRM,* 30 FCC Rcd at 12978, 12981-82, paras. 9, 18. *See, e.g.*, Letter from Angela Roth, Managing Member, President, and Chief Executive Officer, ASL Services Holdings, LLC (ASL/Global VRS), to Marlene H. Dortch, FCC Secretary, and Appx. A (filed Apr. 28, 2015); Letter from Jeremy M. Jack, Vice President, Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Axess Ability Group (CAAG/Star VRS), to Marlene H. Dortch, FCC Secretary, and Appx. B (filed Apr. 28, 2015); Letter from Jeff Rosen, General Counsel, Convo Communications, LLC (Convo), to Marlene H. Dortch, FCC Secretary, and confidential handout (filed Jun. 12, 2015) (Convo June 12, 2015 Ex Parte).

[18] *Rate Freeze Order* at 5, citations in original omitted.

[19] *Id.* at 10 original citations retained.

[20] ...(stating that in order to continue operating despite deficits, the smallest VRS providers "have been forced to seek alternative financing arrangements, such as short-term bridge loans from family members, or to subsidize their VRS operations from revenue generated by other profitable non-VRS divisions"), 11-12 (asserting that such alternative financing arrangements are insufficient to enable the smallest providers to continue their growth trajectories).

[21] *2013 VRS Reform Order*, 28 FCC Rcd at 8704, para. 214.

The Commission found that an adjusted compensation rate of $5.29 per minute would "generally provide a reasonable level of support for the operations of the smallest VRS providers and will not risk providing significant overcompensation for such providers.[22]

With the benefit of the record before it, the Commission implemented the 16-month Rate Relief. According to the Commission, its Rate Relief would "allow the smallest VRS providers the opportunity to achieve market share growth and improvements in efficiency while benefitting from further implementation of structural reforms – such as the establishment of the ACE platform, which will address interoperability and other matters and is scheduled for launch this year."[23] Yet neither of these anticipated results have occurred.

IV. THE CIRCUMSTANCES PRECIPITATING RATE RELIEF HAVE NOT CHANGED IN THE SCANT SIX MONTHS SINCE RELIEF WAS GRANTED.

A. GlobalVRS is Still Not Fully Compensated for Its VRS Costs Despite the Temporary Rate Relief.

GlobalVRS has submitted its cost studies to the Fund Administrator and Commission, which are an acknowledge part of the record before the Commission. Rather than "achieve market share and improvements in efficiency while benefiting from further implementation of structural reforms" as anticipated by the Commission, GlobalVRS has had to slash costs even further simply to continue provision of VRS under the current compensation structure. GlobalVRS has also continued to assume exogenous costs associated with still pending implementation of Commission reforms; conditions that cannot remain indefinitely.

Since the Rate Relief was adopted, GlobalVRS has:

- [REDACTED]

[22] *Rate Freeze Order* at 10, though the Commission does not establish the basis for its conclusion regarding the "risk" of "overcompensation" of Tier 1 providers.

[23] *Id.* at 14.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

  and

- [REDACTED]

These cost cutting efforts have been necessary simply to tread water. In the absence of promised reforms, it remains unclear how GlobalVRS can achieve greater efficiencies, let alone continue in the provision of VRS.

At the time the 2013 program reforms were adopted, the Commission recognized the need to "better align VRS compensation rates with the allowable costs of this service pending a further determination as to VRS compensation methodology."[24] Since that time, the Commission has reviewed Tier 1 provider cost data and acknowledged that Tier 1 providers are not being compensated for their service costs. Yet the Commission has done nothing to amend its flawed compensation methodology to account for the unique costs assumed by Tier 1 providers. To be sure, the most recent fiscal year 2016-2017 Fund administrator compensation submission to the FCC remains unchanged in terms of its continued reliance of historical provider aggregate allowable costs that GlobalVRS has shown significantly skew cost results for Tier 1 providers in favor of the entrenched dominant providers, as also acknowledged by the Commission.

To date, GlobalVRS is still not being fully compensated for its service rates, despite GlobalVRS long standing efforts to reduce cost and improve efficiency where possible. GlobalVRS' ability to improve efficiency has been undermined during the pendency of promised

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[24] *2013 VRS Reform Order* at 1.

reforms and now again by the end of the Rate Relief. There is nothing in the record that definitively establishes that ACE platform or other reforms that could potentially result in provider cost offsets will be implemented by the October 31, 2016 Rate Relief termination date.

GlobalVRS' cost data has provided factual evidence that the Company is not being compensated for its service costs, remains in an uncertain position of maintaining its VRS operations, and is clearly unable to continue to grow its "operations significantly in the direction of reaching optimum levels of efficiency;" the same position it faced in March 2016. By failing to compensate GlobalVRS for its VRS costs in the absence of documented implementation of program reforms after October 31, 2016, the Commission will not be acting within its statutory obligation to fully compensate GlobalVRS its service costs.

B. The Circumstances Precipitating the Glide Path Rates and Rate Freeze Have Not Materialized.

In March 2016, the Commission implemented a 16-month Rate Relief on the basis that Rate Relief would give Tier 1 providers an opportunity to grow and become even more efficient, while benefiting from further structural reforms;

> This 16-month rate freeze allows the smallest VRS providers the opportunity to achieve market share growth and improvements in efficiency while benefitting from further implementation of structural reforms – such as the establishment of the ACE platform, which will address interoperability and other matters and is scheduled for launch this year."[25]

ACE platform and provider interoperability, among other reforms, were identified as going hand in hand with Rate Relief and were to have been scheduled for implementation, presumably by the October 31, 2016 Rate Relief termination date.

When adopting the temporary Rate Relief, the Commission explicitly acknowledged that Tier 1 providers were at that time unable to maintain their operations and grow their operations

[25] *Rate Freeze Order* at 14.

significantly to achieve "optimum levels of efficiency." The Commission anticipated that the Rate Relief would enable Tier 1 providers to maintain and grow their operations in anticipation of the ACE platform deployment and implementation of other structural reforms that would be available before October 31, 2016. In her *VRS Rate Freeze NPRM* statement for example, Commissioner Clyburn notes,[26]

> One aspect of the 2013 Order that has fallen a bit under the radar is the open platform initiative. I am excited to note that the initiative, known as Accessible Communications for Everyone (ACE), **is scheduled for launch in mid-2016, with a beta version available in early 2016. Once implemented, ACE will be available to everyone as an app and should facilitate some of the proposals in the Further Notice**, including an option to have the first available VRS provider answer the call, which should encourage competition among VRS providers.

Despite the Commission's best efforts at deploying the ACE platform this year, the reality is that the ACE platform has not yet been deployed, and it is unclear whether the Commission can provide a date certain, if before October 31, 2016, when the platform will be deployed.

Though the Rate Relief period covers 16 month, the Rate Relief has been in effect for less than six months, hardly enough time for GlobalVRS to become more competitive, let alone achieve greater economies of scale, while still preparing to meet 2013 VRS reforms that are not in place. GlobalVRS has demonstrated that it is still not being compensated for its VRS costs, and that the reforms which were to have benefited providers and been implemented prior October 31, 2016 remain pending. In light of the fact that the conditions which supported the Rate Relief remain unchanged, the October 31, 2016 Rate Relief termination date has drifted into an arbitrary and capricious end date, and should now be extended for GlobalVRS based on the evidence in the record before the Commission.

[26] *VRS Rate Freeze NPRM,* Statement of Commissioner Mignon Clyburn.

V. IN THE ABSENCE OF ANY MATERIAL CHANGE OF CONDITIONS SINCE THE RATE FREEZE ORDER WAS RELEASED IN MARCH 2016, THE 16-MONTH RATE FREEZE PERIOD HAS BECOME AN ARBITRARY AND CARPRICIOUS TERMINATION DATE.

Presented with evidence that the conditions on which the Rate Relief termination date was predicated, including GlobalVRS' continued financial position, its exceptionally limited ability to pursue greater efficiencies, and the delays in anticipated reform implementation intended in part to benefit providers, no longer apply, the October 31, 2016 Rate Relief termination date now becomes arbitrary and capricious.

When proposing a 16-month rate freeze, the Commission never explicitly stated why a 16-month rate freeze period beginning July 1, 2015 was selected. Rather the Commission asked whether its proposed 16-month rate period would "be sufficient to provide small providers a reasonable window of opportunity to achieve the necessary scale and efficiencies to be able to continue offering service."[27]

Upon adoption of the Rate Relief, the Commission noted of the Rate Relief period,

> This 16-month rate freeze allows the smallest VRS providers the opportunity to achieve market share growth and improvements in efficiency while benefitting from further implementation of structural reforms – such as the establishment of the ACE platform, which will address interoperability and other matters and is scheduled for launch this year.[28]

In its pronouncement, the Commission did not clearly established how it had reached this conclusion, beyond the implied benefits of ACE platform deployment. The facts to date belie the Commission's conclusion.

At the time the Commission proposed a 16-month rate freeze, the Commission expressed

[27] *Id.*

[28] *Rate Freeze Order* at 14.

its reluctance to extend the freeze.[29] The Commission's reluctance was explicitly predicated on the disparity between provider costs and rates at that time and the "substantial window of opportunity" that had been given providers to adjust to the reduced rates.[30] In its March 2016 *Rate Freeze Order*, however, the disparity between compensation rates and Tier 1 provider costs and the period of time for Tier 1 providers to adjust to the lower rates was affirmatively disproven by the Fund administrator, as acknowledged by the Commission. The finding that Tier 1 providers are not being compensated for their costs and that Tier 1 providers are in jeopardy of being unable to sustain operations, let alone grow their operations, refutes the original basis for the Commission's reluctance to extend the date.

GlobalVRS has yet to achieve "market share growth and improvements in efficiency" nor has it realized the benefits from further structural reforms, as documented above. In the absence of a specific facts supporting a 16-month Rate Relief period and evidence which refutes the Commission's original basis for implementing a 16-month Rate Relief period, the October 31, 2016 Rate Relief period termination date is arbitrary and capricious; the Commission's original explanation for its decision runs counter to the evidence before it, consistent with the Court's findings in *Sorenson*, addressed above.

VI. REQUESTED FOR RELIEF.

GlobalVRS respectfully requests that the Commission extend the current Rate Relief period beyond October 31, 2016 until definitive ACE platform deployment and reform implementation dates are established and the Commission amends its rate methodology to

[29] "Given the substantial disparity that remains between currently applicable rates and average provider costs and the substantial window of opportunity already afforded to providers for adjustment to reduced compensation rates, we would be reluctant to extend the rate freeze beyond October 31, 2016." *Rate Freeze NPRM* at 19.

[30] For GlobalVRS, this "window of opportunity" was the period from its initial provision of VRS in December 2011 through the *Rate Freeze NPRM* release date in November 2015: four years – nearly three years of which GlobalVRS operated under the Commission's "glide path" declining compensation structure. This "window of opportunity" has been significantly less than the far longer "window of opportunity" that was accorded to incumbent providers.

separately incorporate for Tier 1 provider allowable costs.[31] GlobalVRS requested extension is consistent with the relief period originally sought by all VRS providers.[32]

The original basis for the Commission's 16-month Rate Relief period has been proven no longer applicable, rendering the October 31, 2016 termination date arbitrary and capricious. The rational for adopting the March 2016 Rate Relief remains unchanged: Global VRS continues to hemorrhage awaiting promised reforms, while a date certain for anticipated reforms remains pending. And the Commission appears no closer to amending its compensation methodology to account for Tier 1 provider allowable costs.

The Commission's seemingly open ended reform implementation places GlobalVRS in the same untenable position it faced just prior to implementation of the Rate Relief in March. Without meaningful compensation rate reform and in the absence of anticipated reform implementation, the 16-month Rate Relief has simply exacerbated GlobalVRS' curtailment of service or market exit to the determent of the Deaf Community. The Rate Relief period should be extended until a firm implementation date for anticipated reforms and a change in the Commission's compensation methodology to account for Tier 1 provider allowable costs are implemented, accordingly.

VII. CONCLUSION

GlobalVRS respectfully requests an emergency extension of the 16-month Tier 1 rate freeze until definitive ACE platform deployment and reform implementation dates are

[31] And to the extent that ACE platform and other reform implementation dates are established and then further delayed that the Rate Relief period be further extended by the same amount of time, accordingly.

[32] *See Rate Freeze NPRM* at 9: "On March 30, 2015, the six currently certified VRS providers jointly filed a petition in which they urged the Commission to freeze the currently applicable VRS compensation rates of $5.29, $4.82, and $4.25 per minute, maintaining them in effect "until [the Commission] implements a permanent rate methodology in the ongoing rulemaking proceeding" citing to Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates, CG Docket Nos. 10-51, 03-123, at 7 (filed Mar. 30, 2015).

established and the Commission amends its rate methodology to separately incorporate Tier 1 provider allowable costs. The Commission has a statutory obligation to compensate providers for their full costs of providing VRS as acknowledged by the Commission and U.S. Court of Appeals for the District of Columbia Circuit. The Commission and Fund Administrator have determined that GlobalVRS is not being compensated for the costs of providing service. Although the Tier 1 rate freeze has provided limited relief, the circumstances on which the March Rate Relief was granted have not changed.

Unless the Commission can establish the basis for terminating the rate freeze on the current record, its 16 month extension is arbitrary and capricious and will result in the exit of reputable providers such as GlobalVRS, whose financial condition will not allow the Company to await promised reforms indefinitely.

Respectfully submitted this 12th day of August, 2016.

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